

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

CAROLINA POWER & LIGHT COMPANY)
d/b/a PROGRESS ENERGY CAROLINAS, INC.,)
v. Plaintiff,) 5:08-CV-00460-FL
3 M COMPANY, et al.,)
Defendants.)

CONSOLIDATION COAL COMPANY,)
v. Plaintiff,) 5:08-CV-00463-FL
3 M COMPANY, et al.,)
Defendants.)

CONSENT ORDER AND STIPULATION REGARDING THE
COURT'S MARCH 24, 2010 ORDER

THIS CAUSE came to be heard on the joint application of Plaintiffs and Defendants with respect to the application of this Court's March 24, 2010 Order (CP&L DE # 277; Consol DE # 305) dismissing Plaintiffs' § 107 claims as to certain Defendants.

In pertinent part, the Court's March 24 Order held as follows:

Concurring defendants' supplemental motion to dismiss plaintiffs' § 107 claim (CP&L DE # 266; Consol DE # 256) is GRANTED. Plaintiffs' claims are DISMISSED as to the concurring defendants only. Cross-claimant's § 107 claims are unaffected by this disposition.

March 24 Order, at 33.

The Court's March 24 Order with respect to the Plaintiffs' § 107 claim was made in response to a motion made by a limited number of defendants. Accordingly, the Order granting the motion was made with respect to only that limited number of defendants. The Plaintiffs and Defendants agree and stipulate that the Court's March 24 Order dismissing the Plaintiffs' § 107 claim as to that limited number of defendants is applicable as to all Defendants.

THEREFORE, IT IS HEREBY STIPULATED, AGREED AND ORDERED that Plaintiffs' § 107 claims as to the remaining defendants are DISMISSED for the reasons set forth in the Court's March 24 ORDER. Cross-claimant PCS Phosphate Company, Inc.'s § 107 claims are unaffected by this disposition.

IT IS FURTHER STIPULATED, AGREED AND ORDERED that Defendants' respective § 113(f) counterclaims asserted in response to the dismissed § 107(a) claims are hereby DISMISSED. Defendants' § 113(f) crossclaims in response to PCS Phosphate's § 107(a) and §113(g)(2) claims are unaffected by this disposition.

It is further stipulated, agreed and ordered that Defendants' Motion to Strike Pursuant to Fed. R. Civ. P. 12(f) Count I of Plaintiff Carolina Power & Light Company d/b/a Progress Energy Carolinas, Inc.'s Consolidated and Third Amended Complaint (CP&L DE # 342; Consol DE # 348) is DENIED as MOOT.

SO ORDERED, THIS 8th DAY OF September, 2010.


LOUISE W. FLANAGAN
Chief United States District Court Judge

CONSENTED TO:

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